

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Houston Byrd, aka Kebra Nagast v. Van Dyken, North Park Seniors
Manager Jane Doe; Housing Commission Manager Jane Doe**

Case No. 25-cv-2011-RSH-BJW · No. 25-cv-2011-RSH-BJW · Decided January 5, 2026

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 HOUSTON BYRD, aka KEBRA Case No. 25-cv-2011-RSH-BJW
NAGAST, 12 ORDER: Plaintiff, 13 vs. (1) DENYING MOTION TO 14 PROCEED IN FORMA
PAUPERIS 15 AS BARRED BY 28 U.S.C. § 1915(g) VAN DYKEN, NORTH PARK 16
SENIORS MANAGER JANE DOE; (2) DISMISSING CIVIL ACTION HOUSING
COMMISSION 17 WITHOUT PREJUDICE FOR MANAGER JANE DOE, FAILURE TO PAY
FILING FEE 18 Defendants.

REQUIRED BY 28 U.S.C. § 1914(a) 19 AND 20 21 (3) DENYING MOTION TO POSTPONE
AS MOOT 22 23 [ECF Nos. 6, 7] 24 25 Plaintiff Houston Byrd, also known as Kebra Nagast, a
pretrial detainee in San Diego 26 Central Jail, is proceeding without counsel in this civil rights
action filed pursuant to 42 27 U.S.C. § 1983 and the Americans with Disabilities Act (“ADA”).
See ECF No. 1 28 (“Compl.”).

While not altogether clear, it appears Plaintiff seeks to sue the property 1 manager at North Park
Seniors, a housing development located at Howard & Texas Streets 2 in San Diego, for, among
other things, breaking his TV, “gaslighting” him, and stalking 3 him after an October 26, 2024,
altercation on the property led to his arrest and eviction. *Id.*; 4 see also ECF No. 3 at 1–2.

5 Plaintiff did not pay the filing fee required by 28 U.S.C. § 1914(a) to commence a 6 civil action
at the time he filed his Complaint; instead, he filed a Motion to Proceed in 7 forma pauperis
(“IFP”) pursuant to 28 U.S.C. § 1915(a). See ECF No. 6. Plaintiff has also 8 submitted three
Declarations in support of his Complaint, and a Motion to Postpone the 9 case until after he is
released from custody.

See ECF Nos. 3, 5, 7, 9, 10. 10 For the reasons explained below, the Court DENIES Plaintiff’s
Motions and 11 DISMISSES the case without prejudice. 12 I. IFP MOTION 13 A. Legal Standard
14 When someone files a lawsuit (other than a writ of habeas corpus) in a federal district 15 court,
the filer must pay a statutory fee of \$350. See 28 U.S.C. § 1914(a).¹ Absent fee 16 payment, the
action may proceed only if the filer seeks, and the court grants him, leave to 17 proceed IFP
pursuant to 28 U.S.C. § 1915(a).

See *Andrews v. Cervantes*, 493 F.3d 1047, 18 1051–52 (9th Cir. 2007) (“Cervantes”). “All persons, not just prisoners, may seek IFP 19 status.” *Moore v. Maricopa County Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). 20 Prisoners and criminal pretrial detainees like Plaintiff, however, “face an additional 21 hurdle.” *Id.* 22 “To help staunch a ‘flood of non-meritorious’ prisoner litigation, the Prison 23 Litigation Reform Act of 1995 (PLRA) established what has become known as the three- 24 25 26 1 The court charges an additional \$55 administrative fee, but “[t]his fee does not apply 27 to ... persons granted in forma pauperis status under 28 U.S.C. § 1915.” 28 U.S.C. § 1914 (Jud.

Conf. Schedule of Fees, Dist. Ct. Misc. Fee Schedule § 14 (eff. Dec. 1, 2023); see 28 1 strikes rule.” *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 597 (2020) (quoting *Jones v. Bock*, 2 549 U.S. 199, 203 (2007)). “That rule generally prevents a prisoner from bringing suit in 3 forma pauperis (IFP) —that is, without first paying the filing fee—if he has had three or 4 more prior suits ‘dismissed on the grounds that [they were] frivolous, malicious, or fail[ed] 5 to state a claim upon which relief may be granted.’” *Id.* (quoting 28 U.S.C. § 1915(g)); *Ray v. Lara*, 31 F.4th 692, 697 (9th Cir.

2022). 7 When courts “review a dismissal to determine whether it counts as a strike, the style 8 of the dismissal or the procedural posture is immaterial.” *Harris v. Mangum*, 863 F.3d 9 1133, 1142 (9th Cir. 2017). The “central question is whether the dismissal ‘rang the PLRA 10 bells of frivolous, malicious, or failure to state a claim.’” *El-Shaddai v. Zamora*, 833 F.3d 11 1036, 1042 (9th Cir.

2016) (quoting *Blakely v. Wards*, 738 F.3d 607, 615 (4th Cir. 2013)). 12 In other words, “[a] strike-call under Section 1915(g)... hinges exclusively on the basis 13 for the dismissal, regardless of the decision’s prejudicial effect.” *Lomax*, 140 S. Ct. at 14 1724–25. 15 “[T]o qualify as a strike for § 1915(g), a case as a whole, not just some of its 16 individual claims, must be dismissed for a qualifying reason.” *Hoffman v. Pulido*, 928 F.3d 17 1147, 1152 (9th Cir.

2019). “[I]f a case was not dismissed on one of the specific enumerated 18 grounds, it does not count as a strike under § 1915(g).” *Harris v. Harris*, 935 F.3d 670, 673 19 (9th Cir. 2019). Once a prisoner accumulates three strikes, however, § 1915(g) precludes 20 his ability to proceed IFP in any other civil actions or appeals in federal court unless he 21 “makes a plausible allegation that [he] faced ‘imminent danger of serious physical injury’ 22 at the time of filing.” *Cervantes*, 493 F.3d at 1051–52 (quoting 28 U.S.C. § 1915(g)).

23 B. Analysis 24 Defendants typically carry the initial burden to produce evidence demonstrating a 25 prisoner is not entitled to proceed IFP, but “in some instances, the district court docket 26 records may be sufficient to show that a prior dismissal satisfies at least one on the criteria 27 under § 1915(g) and therefore counts as a strike.” *Andrews v. King*, 398 F.3d 1113, 1120 28 (9th Cir.

2005). This is one of those instances. A review of both Southern and Central 1 District of California district court dockets publicly available on PACER show Plaintiff, 2 who is also known as Kebra Nagast, is no longer eligible to proceed IFP because while 3 incarcerated, he has had more than three prior prisoner civil actions dismissed on the 4 grounds that they were frivolous, malicious, or failed to state a claim upon which relief 5 may be granted.

See Compl. at 1; ECF No. 4 at 1. Pursuant to Federal Rule of Evidence 6 201(b)(2), this Court may take judicial notice of the docket records in Plaintiff's prior 7 cases. See *Andrews*, 398 F.3d at 1120; *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 8 1980) (stating that a court may take judicial notice of its own records in other cases, as well 9 as other courts' records).

10 The following records are sufficient to show Plaintiff has four qualifying strikes: 11 (1) *Nagast v. Lee, et al.*, Case No. 3:01-cv-02362-L-NLS (S.D. Cal. April 2, 2002) (Order granting IFP and dismissing complaint for failing to 12 state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1)) 13 (ECF No. 6); 14 (2) *Nagast v. Director of Corrections, et al.*, Case No. 5:09-cv-01044-CJC- 15 PJW (C.D.

Cal. Feb. 28, 2012) (Report & Recommendation [R&R] to grant Defendants' motion to dismiss Second Amended Complaint for 16 failure to state a claim) (ECF No. 94); *id.*, (C.D. Cal. April 26, 2012) 17 (Order accepting R&R) (ECF No. 96); *id.*, (C.D. Cal. July 10, 2012) (R&R to dismiss civil action with prejudice for failure to amend and/or 18 prosecute); *id.* (C.D.

Cal. Sept. 26, 2012) (Order accepting R&R and 19 dismissing civil action); 2 20 (3) *Nagast v. House of Metamorphosis*, Case No. 3:10-cv-1036-JAH-POR 21 (S.D. Cal., Nov. 29, 2010) (Order dismissing First Amended Complaint for failing to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) & 22 1915A(b)(1) (ECF No. 10); and 23 24 25 2 See *Harris*, 863 F.3d at 1142 (finding that a failure to amend does "not negate the 26 determination already made by the Court that the complaint [plaintiff] had filed... failed to 27 state a claim."). "A prisoner may not avoid incurring strikes simply by declining to take advantage of [an] opportunit[y] to amend." *Id.* at 1143.

28 1 (4) *Nagast v. Office of the Public Defender, et al.*, Case No. 3:21-cv-0164- TWR-JLB (S.D. May 11, 2021) (Order dismissing First Amended 2 Complaint for failing to state a claim without leave to amend pursuant 3 to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1)) (ECF No. 12). 4 Because Plaintiff accumulated these prior strike dismissals while incarcerated, he 5 may not proceed IFP in this case unless he meets § 1915(g)'s "imminent danger" 6 exception.³ To do so, his pleadings must contain a "plausible allegation that [he] faced 7 'imminent danger of serious physical injury' at the time of filing." *Cervantes*, 493 F.3d at 8 1055 (quoting U.S.C. § 1915(g)).

Imminent danger requires plausible allegations of harm 9 "ready to take place," or "hanging threateningly over one's head," *id.* at 1056, and must 10 also "stem[] from the violations of law alleged in [the] complaint," *Ray*, 31 F.4th at 701. 11 The exception "functions as a limited safety

valve,” *id.*, but it “cannot be triggered solely 12 by complaints of past injury or generalized fears of possible future harm,” *Hernandez v. Williams*, No. 21-cv-347-MMA-KSC, 2021 WL 1317376, at *2 (S.D.

Cal. Apr. 8, 2021) 14 (citing *Cervantes*, 493 F.3d at 1053). 15 Neither Plaintiff’s Complaint nor his subsequently filed Declarations include any 16 plausible allegations of imminent or ongoing physical danger. Instead, Plaintiff claims that 17 a private property manager, together with two unidentified public housing commissioners, 18 destroyed his property in 2024 and engaged in a campaign of harassment in order to assault 19 and evict him because he is Black and Muslim.

See Compl. at 3; see also ECF No. 3 at 1– 20 3; ECF No. 4 at 2–3. Section 1915(g)’s “imminent danger” exception cannot be triggered 21 merely by reference to past injuries. See *Cervantes*, 493 F.3d at 1053; see also *Allen v. Villanueva*, No. 3:20-cv-02334-WQH-WVG, 2021 WL 614995, at *2 (S.D. Cal. Feb. 16, 23 2021) (“[C]onclusory references to a past incident of force, without more, are insufficient 24 to plausibly suggest Plaintiff faced an ‘imminent danger of serious physical injury’ at the 25 26 27 3 A court in this district first noted Plaintiff’s § 1915(g) bar in 2016 in *Byrd v. Director of Corrections, et al.*, Case No. 3:15-cv-2339-GPC-KSC (S.D.

Cal. Feb. 29, 2016) (ECF 28 1 time he filed his Complaint.”); *Cohea v. Davey*, No. 1:19-CV-01281-LJO-SAB (PC), 2019 2 WL 5446490, at *1 (E.D. Cal. Oct. 24, 2019) (finding prisoner’s allegations of past assaults 3 insufficient to show “imminent danger” under 1915(g)), reconsideration denied, No. 1:19- 4 CV-01281-NONE-SAB (PC), 2020 WL 5763929 (E.D. Cal. Sept.

28, 2020). 5 Moreover, none of Plaintiff’s broad allegations of conspiracy, retaliation, or 6 purported ADA violations plausibly suggest he faced imminent or ongoing physical danger 7 at the time he filed suit from the San Diego County Jail. See *Cervantes*, 493 F.3d at 1055; 8 *Tyler v. Matruz*, No. 25-CV-01337-CAB-DEB, 2025 WL 2441043, at *3 (S.D. Cal. Aug. 9 25, 2025) (“[P]ast assaults, random acts of racial discrimination or harassment, and 10 sprawling allegations of conspiracy and retaliation do not meet § 1915(g)’s exception for 11 ‘imminent danger.’”); *Harris v. Phillips*, No. 1:23-CV-01051-SAB (PC), 2023 WL 12 5103357, at *2 (E.D.

Cal. July 17, 2023) (finding alleged violations of the Americans with 13 Disabilities Act insufficient to show “imminent” or “ongoing” danger), report and 14 recommendation adopted, 2024 WL 2852447 (E.D. Cal. June 5, 2024). 15 For these reasons, the Court finds Plaintiff is not entitled to proceed IFP in this case. 16 “A negative consequence that may impact a prisoner who files... frivolous complaint[s] 17 is a restriction on his ability to file future cases without prepaying filing fees.” *Harris*, 863 18 F.3d at 1139.

Because Plaintiff did not pay the full \$405 statutory and administrative filing 19 fee required by 28 U.S.C. § 1914(a), his litigation history precludes proceeding IFP, and 20 he was not in

imminent danger of serious physical injury at the time he filed his Complaint 21 and therefore does not qualify for § 1915(g)'s exception to the three-strikes rule, his suit is 22 subject to dismissal.

See *Hymas v. U.S. Dep't of the Interior*, 73 F.4th 763, 765 (9th Cir. 23 2023) (“[W]here [an] IFP application is denied altogether, Plaintiff’s case [cannot] proceed 24....”). 25 // 26 // 27 // 28 // 1
CONCLUSION 2 Accordingly, the Court: 3 (1) DENIES Plaintiff's Motion to Proceed IFP (ECF No. 6) as barred by 28 4 ||U.S.C. § 1915(g); 5 (2) DISMISSES this civil action without prejudice based on Plaintiff’s failure to 6 || pay the full \$405 civil filing fee required by 28 U.S.C. § 1914(a); 7 (3) DENIES Plaintiff's Motion to Postpone (ECF No. 7) as moot; 8 (4) CERTIFIES that an IFP appeal would not be taken in good faith pursuant to 9 1/28 U.S.C. § 1915(a)(3), and 10 (5) DIRECTS the Clerk of Court to close the case.

11 IT IS SO ORDERED. ‘ 12 || Dated: January 5, 2026 Jebut Love 13 Hon.RobertS.Huie 14
United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28 7 a □□